

SENATE BILL 264

N1

11r0513

By: **Senator Kelley**

Introduced and read first time: January 31, 2011

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Common Ownership Communities – Fidelity Insurance – Indemnification**

3 FOR the purpose of altering the scope of indemnification provided by fidelity
4 insurance that the board of directors or other governing body of a cooperative
5 housing corporation, council of unit owners or other governing body of a
6 condominium, or board of directors or other governing body of a homeowners
7 association is required to purchase under certain circumstances; requiring a
8 management company that provides certain services to a cooperative housing
9 corporation, condominium, or homeowners association to purchase certain
10 fidelity insurance under certain circumstances; making stylistic changes; and
11 generally relating to common ownership communities and fidelity insurance.

12 BY repealing and reenacting, with amendments,
13 Article – Corporations and Associations
14 Section 5–6B–18.6
15 Annotated Code of Maryland
16 (2007 Replacement Volume and 2010 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Real Property
19 Section 11–114.1 and 11B–111.6
20 Annotated Code of Maryland
21 (2010 Replacement Volume and 2010 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article – Corporations and Associations**

25 5–6B–18.6.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) In this section, “fidelity insurance” includes a fidelity bond.

2 (b) This section does not apply to a cooperative housing corporation:

3 (1) That has four or fewer members; and

4 (2) For which 3 months’ worth of gross common charges is less than
5 \$2,500.

6 (c) [(1)] The board of directors or other governing body of a cooperative
7 housing corporation shall purchase fidelity insurance not later than the time of the
8 first sale of a cooperative interest with respect to a unit to a person other than the
9 developer and shall keep fidelity insurance in place for each year thereafter.

10 [(2)] (D) The fidelity insurance required under [paragraph (1) of this]
11 subsection (C) OF THIS SECTION shall provide for the indemnification of the
12 cooperative housing corporation against loss resulting from acts or omissions arising
13 from fraud, dishonesty, or criminal acts by[:

14 (i) Any] ANY officer, director, managing agent, or other agent
15 or employee charged with the operation or maintenance of the cooperative housing
16 corporation who [controls]:

17 (1) CONTROLS or disburses funds; and

18 (2) IS UNDER THE DIRECT SUPERVISION OF THE BOARD OF
19 DIRECTORS OR OTHER GOVERNING BODY OF THE COOPERATIVE HOUSING
20 CORPORATION.

21 [(ii)] (E) [Any management company employing a
22 management] IF THE BOARD OF DIRECTORS OR OTHER GOVERNING BODY OF A
23 COOPERATIVE HOUSING CORPORATION CONTRACTS WITH A MANAGEMENT
24 COMPANY FOR OPERATION OR MAINTENANCE SERVICES FOR THE COOPERATIVE
25 HOUSING CORPORATION, THE MANAGEMENT COMPANY SHALL PURCHASE
26 FIDELITY INSURANCE THAT PROVIDES FOR THE INDEMNIFICATION OF THE
27 COOPERATIVE HOUSING CORPORATION AGAINST LOSS RESULTING FROM ACTS
28 OR OMISSIONS ARISING FROM FRAUD, DISHONESTY, OR CRIMINAL ACTS BY ANY
29 agent or [other] employee OF THE MANAGEMENT COMPANY charged with the
30 operation or maintenance of the cooperative housing corporation who controls or
31 disburses funds.

32 [(d)] (F) A copy of the fidelity insurance policy or fidelity bond PURCHASED
33 UNDER SUBSECTION (D) OR (E) OF THIS SECTION shall be included in the books
34 and records kept and made available by or on behalf of the cooperative housing
35 corporation under § 5–6B–18.5 of this subtitle.

1 **(2) IS UNDER THE DIRECT SUPERVISION OF THE COUNCIL OF**
 2 **UNIT OWNERS OR OTHER GOVERNING BODY OF THE CONDOMINIUM.**

3 **[(ii) (E) [Any management company employing a**
 4 **management] IF THE COUNCIL OF UNIT OWNERS OR OTHER GOVERNING BODY**
 5 **OF A CONDOMINIUM CONTRACTS WITH A MANAGEMENT COMPANY FOR**
 6 **OPERATION OR MAINTENANCE SERVICES FOR THE CONDOMINIUM, THE**
 7 **MANAGEMENT COMPANY SHALL PURCHASE FIDELITY INSURANCE THAT**
 8 **PROVIDES FOR THE INDEMNIFICATION OF THE CONDOMINIUM AGAINST LOSS**
 9 **RESULTING FROM ACTS OR OMISSIONS ARISING FROM FRAUD, DISHONESTY, OR**
 10 **CRIMINAL ACTS BY ANY agent or [other] employee OF THE MANAGEMENT**
 11 **COMPANY charged with the operation or maintenance of the condominium who**
 12 **controls or disburses funds.**

13 **[(d) (F) A copy of the fidelity insurance policy or fidelity bond PURCHASED**
 14 **UNDER SUBSECTION (D) OR (E) OF THIS SECTION shall be included in the books**
 15 **and records kept and made available by the council of unit owners under § 11–116 of**
 16 **this title.**

17 **[(e) (G) (1) The amount of the fidelity insurance required under**
 18 **[subsection (c)] SUBSECTIONS (D) AND (E) of this section shall equal at least the**
 19 **lesser of:**

20 (i) 3 months' worth of gross annual assessments and the total
 21 amount held in all investment accounts at the time the fidelity insurance is issued; or

22 (ii) \$3,000,000.

23 **(2) The total liability of the insurance to all insured persons under the**
 24 **fidelity insurance may not exceed the sum of the fidelity insurance.**

25 **[(f) (H) If a unit owner believes that the council of unit owners or other**
 26 **governing body of a condominium has failed to comply with the requirements of this**
 27 **section, the aggrieved unit owner may submit the dispute to the Division of Consumer**
 28 **Protection of the Office of the Attorney General under § 11–130 of this title.**

29 11B–111.6.

30 (a) In this section, “fidelity insurance” includes a fidelity bond.

31 (b) This section does not apply to a homeowners association:

32 (1) That has four or fewer lot owners; and

33 (2) For which 3 months' worth of gross annual homeowners
 34 association fees is less than \$2,500.

1 (c) [(1)] The board of directors or other governing body of a homeowners
2 association shall purchase fidelity insurance not later than the time of the first
3 conveyance of a lot to a person other than the declarant and shall keep fidelity
4 insurance in place for each year thereafter.

5 [(2)] (D) The fidelity insurance required under [paragraph (1) of this]
6 subsection (C) OF THIS SECTION shall provide for the indemnification of the
7 homeowners association against loss resulting from acts or omissions arising from
8 fraud, dishonesty, or criminal acts by[:

9 (i) Any] ANY officer, director, managing agent, or other agent
10 or employee charged with the operation or maintenance of the homeowners association
11 who [controls]:

12 (1) CONTROLS or disburses funds; and

13 (2) IS UNDER THE DIRECT SUPERVISION OF THE BOARD OF
14 DIRECTORS OR OTHER GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION.

15 [(ii)] (E) [Any management company employing a
16 management] IF THE BOARD OF DIRECTORS OR OTHER GOVERNING BODY OF A
17 HOMEOWNERS ASSOCIATION CONTRACTS WITH A MANAGEMENT COMPANY FOR
18 OPERATION OR MAINTENANCE SERVICES FOR THE HOMEOWNERS ASSOCIATION,
19 THE MANAGEMENT COMPANY SHALL PURCHASE FIDELITY INSURANCE THAT
20 PROVIDES FOR THE INDEMNIFICATION OF THE HOMEOWNERS ASSOCIATION
21 AGAINST LOSS RESULTING FROM ACTS OR OMISSIONS ARISING FROM FRAUD,
22 DISHONESTY, OR CRIMINAL ACTS BY ANY agent or [other] employee OF THE
23 MANAGEMENT COMPANY charged with the operation or maintenance of the
24 homeowners association who controls or disburses funds.

25 [(d)] (F) A copy of the fidelity insurance policy or fidelity bond PURCHASED
26 UNDER SUBSECTION (D) OR (E) OF THIS SECTION shall be included in the books
27 and records kept and made available by or on behalf of the homeowners association
28 under § 11B–112 of this title.

29 [(e)] (G) (1) The amount of the fidelity insurance required under
30 [subsection (c)] SUBSECTIONS (D) AND (E) of this section shall equal at least the
31 lesser of:

32 (i) 3 months' worth of gross annual homeowners association
33 fees and the total amount held in all investment accounts at the time the fidelity
34 insurance is issued; or

35 (ii) \$3,000,000.

1 (2) The total liability of the insurance to all insured persons under the
2 fidelity insurance may not exceed the sum of the fidelity insurance.

3 **[(f)] (H)** If a lot owner believes that the board of directors or other
4 governing body of a homeowners association has failed to comply with the
5 requirements of this section, the aggrieved lot owner may submit the dispute to the
6 Division of Consumer Protection of the Office of the Attorney General under §
7 11B-115 of this title.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2011.